

AGENDA A— January 9, 2002 Business Taxes Committee Meeting
Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
Regulation 1533, Liquefied Petroleum Gas

<p>Action 1 — Consent Items</p> <p>Proposed Regulation 1533, <i>Liquefied Petroleum Gas</i> Exhibit 3</p>	<p>Adopt proposed regulation as agreed upon by industry and staff.</p>
<p>Action 3 — Authorization to Publish</p>	<p>Recommend publication of the proposed Regulation 1533, as adopted in the above actions.</p> <p>Operative Date: September 1, 2001 Implementation: 30 days following OAL approval</p>

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Regulation 1533, Liquefied Petroleum Gas

Action Item	Staff and Industry's Proposed Regulatory Language
<p>Action 1 — Consent Items</p> <p>Exhibit 3</p>	<p>Regulation 1533. Liquefied Petroleum Gas</p> <p>Reference: Section 6353, Revenue and Taxation Code.</p> <p>(a) GENERAL. Commencing on and after September 1, 2001, Section 6353(b) of the Revenue and Taxation Code exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of qualified LPG used by a qualified person in an agricultural activity, or used in a qualified residence for a household activity. The terms “qualified LPG,” “qualified person,” “agricultural activity,” “qualified residence,” and “household activity” are defined below.</p> <p>(b) DEFINITIONS. For purposes of this regulation:</p> <p>(1) “Agricultural activity” means the producing and harvesting of agricultural products as defined in subdivision (b)(4), by a qualified person as defined in subdivision (b)(5).</p> <p>(2) “Household activity” means those activities normally undertaken in a qualified residence as defined in subdivision (b)(7), such as cooking, heating and lighting.</p> <p>(3) “Person that assists a qualified person” means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual) which include soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services, that uses qualified LPG in assisting a person engaged in a line of business described in subdivision (b)(5). A person that assists a qualified person may perform a construction contract only if the person performing the contract is engaged in farm management services as described in Code 0762 of the SIC Manual and the construction is integral to the producing and harvesting of an agricultural product as defined in (b)(4). A person that assists a qualified person must provide physical aid or assistance in the actual producing and harvesting of agricultural</p>

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	<p>products owned by the qualified person and not merely provide aid in administrative, managerial, or marketing activities. A person that assists a qualified person does not include persons performing services such as an attorney, accountant, consultant, or other similar activity. Except as otherwise provided above, a person that assists a qualified person also does not include persons who perform construction contracts or who perform repairs to farm equipment and machinery, or a person who assists such persons.</p> <p>(4) "Producing and harvesting agricultural products" means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Codes 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 – Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(5) or a person who assists a qualified person as defined in (b)(3).</p>

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	<p>Example A: Grower A farms raisins and uses qualified LPG to dry Grower A's raisins. Grower A is a qualified person (Code 0172 of the SIC Manual) and uses qualified LPG in the producing and harvesting of an agricultural commodity. The sale of qualified LPG to Grower A for use in this activity is exempt from tax.</p> <p>Example B: Grower B farms plums and contracts with ABC, Inc. to dry the plums owned by Grower B in preparation for sale. ABC, Inc. uses qualified LPG to dry the plums. ABC, Inc. is a person assisting a qualified person (Code 0723 of the SIC Manual) such that the sale of qualified LPG to ABC for use in this activity is exempt from tax.</p> <p>Example C: Grower C farms corn. Grower C sells the "wet" corn to a food processor based on the net dry weight of the product. The food processor uses qualified LPG to dry the corn. The food processor's use of qualified LPG to dry the commodity is not a qualified use since the food processor owns the commodity and thereby only performs a non-qualified, post harvesting activity. The sale of qualified LPG to the food processor for use in this activity is not exempt from tax.</p> <p>(5) "Qualified person" means a person who purchases qualified LPG that is engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291, which includes cash grains, field crops, vegetables and melons, fruits and tree nuts, horticultural specialties, livestock, dairy, poultry and eggs, and animal specialties and who sells such commodities to others. A qualified person also includes any person conducting activities, as defined in subdivision (b)(3), that uses qualified LPG to assist a person engaged in a line of business described herein in producing and harvesting agricultural products owned by the qualified person. A qualified person is not required to be engaged 50 percent or more of the time in a line of business described in Codes 0111 to 0291. A qualified person does not include a person operating a garden plot, orchard, or farm for the purpose of growing produce or animals for that person's own use.</p>

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	<p>(6) "Qualified LPG" means liquefied petroleum gas delivered into a tank with a storage capacity that is equal to or greater than 30 gallons. Liquefied petroleum gas is a mixture of light hydrocarbons which are gaseous at atmospheric temperature and pressure. Liquefied petroleum gas occurs naturally in crude oil and natural gas production fields and is also produced in the oil refining process. Its main components are Propane (C₃H₈) at a boiling point of -42.07°C and Butane (C₄H₁₀) at a boiling point of 0°C. Delivery into tanks smaller than 30 gallons do not qualify for the exemption even if the total delivery exceeds 30 gallons.</p> <p>(7) "Qualified residence" means a primary residence not serviced by gas mains and pipes, to which qualified LPG is delivered by a seller. A primary residence means a person's domicile where that person spends the greatest portion of his or her time during a calendar year. A person may change his or her primary residence only when that person moves from and otherwise abandons his or her previous residence and has no intent to return to that previous residence. In no event shall a primary residence include multiple residences maintained simultaneously such as a second, or vacation home.</p> <p>Solely for purposes of this regulation, a qualified residence also includes a residence where qualified LPG is purchased by a qualified person for use in a household activity at the primary residence of:</p> <p style="padding-left: 40px;">(A) A person that assists a qualified person; or</p> <p style="padding-left: 40px;">(B) An employee of a qualified person</p> <p>where such person that assists a qualified person or employee of a qualified person performs an agricultural service described in Codes 0711 to 0783 of the SIC Manual for the qualified person. In addition, solely for purposes of this regulation, a qualified residence includes a residence where qualified LPG is purchased by a landlord or management company on behalf of a renter or tenant for use in a household activity at the primary residence of the renter or tenant.</p>

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	<p>(c) EXEMPTION CERTIFICATES.</p> <p>(1) IN GENERAL. A person who purchases qualified LPG for use in an agricultural or household activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with an exemption certificate in order for the retailer to claim the exemption. If the retailer takes an exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a purchaser, the exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. An exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified LPG, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified LPG to the purchaser, or no later than 15 days after the date of purchase. An exemption certificate which is not taken timely will not relieve the retailer of the tax liability; however the retailer may present satisfactory evidence to the Board that the retailer sold the qualified LPG to a purchaser for use in an agricultural or household activity. An exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the exemption on its sales and use tax return for the reporting period during which the transaction subject to the exemption occurred. Where the retailer fails to claim the exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).</p> <p>The exemption certificate form set forth in Appendix A may be used to claim the exemption.</p> <p>(2) BLANKET EXEMPTION CERTIFICATES. In lieu of requiring an exemption certificate for each transaction, a person who purchases qualified LPG for use in an agricultural or household activity may issue a blanket exemption certificate. The exemption certificate form set forth in Appendix A may be used as a blanket exemption certificate. Appendix A may also be used as a specific exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases qualified LPG for use in an agricultural or household activity must include in the exemption certificate how much or what percentage of the qualified LPG will be used in the agricultural or household activity. If purchasing liquefied petroleum gas not qualifying for the exemption, the purchaser must clearly</p>

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	<p>state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket exemption certificate.</p> <p>(3) FORM OF EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as an exemption certificate with respect to the sale or purchase of the liquefied petroleum gas if it contains all of the following essential elements:</p> <p>(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.</p> <p>(B) The name, address and telephone number of the purchaser.</p> <p>(C) The number of the seller's permit held by the purchaser. Except as otherwise provided in subdivision (b)(7), if the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.</p> <p>(D) A statement that:</p> <ol style="list-style-type: none"> 1. Of the liquefied petroleum gas purchased, how much or what percentage will be delivered by the seller into a tank with a storage capacity equal to or greater than 30 gallons for use in a household activity at the primary residence, which is not serviced by gas mains and pipes, of: <ol style="list-style-type: none"> a. The purchaser; b. A person described in Codes 0711 to 0783 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that assists a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual ("qualified person") or an employee of a qualified person where the LPG is purchased by

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	<p>such qualified person on behalf of the person that assists that qualified person in producing and harvesting agricultural products or on behalf of the employee that assists a qualified person in producing and harvesting agricultural products; or</p> <p style="padding-left: 40px;">c. A renter or tenant where the LPG is purchased by a landlord or management company on behalf of the renter or tenant.</p> <p>2. Of the liquefied petroleum gas purchased, how much or what percentage will be delivered into a tank with a storage capacity equal to or greater than 30 gallons for use in producing and harvesting agricultural products, and will be purchased by:</p> <p style="padding-left: 40px;">a. A person engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, ("qualified person");</p> <p style="padding-left: 40px;">b. A person described in Codes 0711 to 0783 of the SIC Manual, that assists a qualified person; or</p> <p style="padding-left: 40px;">c. An employee of a qualified person.</p> <p>(E) Date of execution of document.</p> <p>(4) RETENTION AND AVAILABILITY OF EXEMPTION CERTIFICATES. A retailer must retain each exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims an exemption based on the exemption certificate.</p> <p>While the Board will not normally require the filing of the exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all exemption certificates, or copies thereof, accepted for the purposes of supporting the exemption.</p>

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	<p>(5) GOOD FAITH. A seller will be presumed to have taken an exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept an exemption certificate in good faith where the purchaser states that the qualified LPG will be used in a qualified residence for a household activity or in which a qualified person states that the qualified LPG will be used for an agricultural activity. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the LPG is not subject to an exemption, will not be otherwise used in an exempt manner, or where a person is not a qualified person when purchasing qualified LPG for an agricultural activity.</p> <p>(d) EXEMPTION CERTIFICATE FOR USE TAX. The exemption certificate must be completed by a purchaser to claim an exemption from use tax on purchases of qualified LPG for use in an agricultural or household activity from an out-of-state retailer not obligated to collect the use tax. An exemption from the use tax shall not be allowed unless the purchaser or retailer claims the exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the exemption occurred. Where the purchaser or retailer fails to claim the exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).</p> <p>The purchaser who files an individual use tax return must attach a completed exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed exemption.</p> <p>The exemption certificate form set forth in Appendix A may be used to claim the exemption.</p> <p>(e) REFUND OF TAX.</p> <p>(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a purchaser may claim the exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with an exemption certificate on or before</p>

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	<p>July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a qualified purchaser of qualified LPG or, at the purchaser's sole option, the purchaser may be credited with such amount.</p> <p>(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the exemption as provided by this regulation may file a claim for refund equal to the amount of the exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a purchaser filing a claim for refund of the exemption has the burden of establishing that he or she was entitled to claim the exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the exemption has the burden of establishing that the purchaser of qualified LPG for use in an agricultural or household activity otherwise met all the requirements of a qualified sale at the time of the purchase subject to the refund claimed under this part.</p> <p>(f) IMPROPER USE OF EXEMPTION.</p> <p>(1) PROPERTY USED OR DELIVERED IN A MANNER NOT QUALIFYING FOR THE EXEMPTION. Tax applies to any sale of, and the storage, use, or other consumption in this state of liquefied petroleum gas that is used or delivered in a manner not qualifying for the exemption under this regulation.</p> <p>(2) PURCHASES BY NON-QUALIFIED PERSONS. Tax applies to any sale of, and the storage, use, or other consumption in this state of qualified LPG for use in an agricultural activity if the purchaser is not a qualified person.</p> <p>(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.</p> <p>(1) If a purchaser timely submits a copy of an exemption certificate to the retailer or exemption</p>

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	<p>certificate for use tax to the Board, and then uses or takes delivery of the liquefied petroleum gas in a manner not qualifying for the exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the liquefied petroleum gas at the time the liquefied petroleum gas was so removed, converted, or used.</p> <p>(2) A purchaser providing an exemption certificate accepted in good faith by the retailer or an exemption certificate for use tax to the Board for liquefied petroleum gas that does not qualify for the exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the liquefied petroleum gas at the time the liquefied petroleum gas was purchased.</p> <p>(h) RECORDS. Adequate and complete records must be maintained by the purchaser as evidence that the qualified LPG purchased was used in an agricultural or household activity.</p> <p>(i) EFFECTIVE DATE. This regulation is effective as of September 1, 2001.</p>

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EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Liquefied Petroleum Gas (LPG)

SELLER'S NAME
SELLER'S ADDRESS (Street, City, State, Zip Code)

The undersigned purchaser hereby certifies that the LPG will be used by a qualified person, as applicable, and in the manner as specified below (check applicable box and complete as necessary):

☐ **LPG used in a Household Activity*** – In accordance with Revenue & Taxation Code Section 6353(b), _____% of the LPG purchased will be delivered by the seller into a tank with a storage capacity equal to or greater than 30 gallons for use in a household activity at the primary residence, which is not serviced by gas mains and pipes, of: 1) the purchaser; 2) a person described in Codes 0711 to 0783 of the Standard Industrial Classification (SIC) Manual, that assists a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual ("qualified person"), or an employee of a qualified person where the LPG is purchased by such qualified person on behalf of the person that assists a qualified person in producing and harvesting agricultural products, or on behalf of the employee of that qualified person in producing and harvesting agricultural products; or 3) a renter or tenant where the LPG is purchased by a landlord or management company on behalf of the renter or tenant.

☐ **LPG used in an Agricultural Activity*** – In accordance with Revenue & Taxation Code Section 6353(b), _____% of LPG purchased will be delivered into a tank with a storage capacity equal to or greater than 30 gallons and used in producing and harvesting agricultural products, and will be purchased by: 1) a person engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual ("qualified person"); or 2) a person described in Codes 0711 to 0783 of the SIC Manual, that assists a qualified person; or 3) an employee of the qualified person.

* This certificate will be considered a blanket certificate for future purchases, unless otherwise specified. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number in the following space:

I understand that if the LPG is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price of the LPG to me. I also understand that this exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)	DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)	PERMIT NUMBER (if applicable) ¹
TITLE	TELEPHONE NUMBER
ADDRESS	CITY
	STATE, ZIP

¹ If you are not required to hold a seller's permit, please enter "Not Applicable."

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Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
Regulation 1533.1, Farm Equipment and Machinery
(Revised January 7, 2002)

<p>Action 1 — Consent Items</p> <p>Agenda, pages 3-14</p>	<p>Adopt portions of proposed Regulation 1533.1 as agreed upon by interested parties and staff.</p>
<p>Action 2 — Agricultural Operating Structures</p> <p>Agenda, pages 15-16</p> <p>This item was included in the original agenda, however interested parties' proposed language was revised on 1/7/02.</p>	<p>Adopt either:</p> <p>Staff's recommendation to not include agricultural operating structures in the partial exemption for farm equipment and machinery,</p> <p style="text-align: center;">OR</p> <p>Interested parties' proposal to include agricultural operating structures in the partial exemption for farm equipment and machinery</p>
<p>Action 3 — Tangible Personal Property Property That Becomes an Integral Part of Real Property</p> <p>Agenda, pages 16-17</p> <p>Interested parties' proposed language was revised on 1/7/02. A discussion of this issue is not included in the Formal Issue Paper or Revenue Estimate.</p>	<p>Adopt either:</p> <p>Staff's recommendation to not include in the partial exemption tangible personal property that is incorporated, attached or affixed to, real property that loses its identity to become an integral and inseparable part of real property,</p> <p style="text-align: center;">OR</p> <p>Interested parties' proposal to include in the partial exemption, tangible personal property that is incorporated, attached or affixed to, real property that loses its identity to become an integral and inseparable part of real property.</p>
<p>Action 4 — Fuel Storage Equipment</p> <p>Agenda, page 17</p> <p>A discussion of this issue is not included in the Formal Issue Paper or Revenue Estimate. However, it is estimated that adoption of interested parties' proposal would result in an annual revenue loss of \$ 1.7 million.</p>	<p>Adopt either:</p> <p>Staff's recommendation to consider fuel storage equipment to be equipment not directly related to crop production and harvesting, and therefore not included in the partial exemption,</p> <p style="text-align: center;">OR</p> <p>Interested parties' proposal to include fuel storage equipment in the partial exemption.</p>

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<p>Action 5 — Repair Tools</p> <p>Agenda, page 17</p> <p>Interested parties' proposed language was revised on 1/7/02. A discussion of the issue is not included in the Formal Issue Paper or Revenue Estimate. No estimate of the revenue impact is available.</p>	<p>Adopt either:</p> <p>Staff's recommendation to consider repair tools to be supply items not directly related to crop production and harvesting, and therefore not included in the partial exemption,</p> <p style="text-align: center;">OR</p> <p>Interested parties' proposal to include repair tools in the partial exemption.</p>
<p>Action 6 — Protective Clothing</p> <p>Agenda, page 18</p> <p>This item was included on the original agenda.</p>	<p>Adopt either:</p> <p>Staff's recommendation to consider clothing designed to protect the wearer from agricultural chemicals to be supply items not directly related to crop production and harvesting, and therefore not included in the partial exemption,</p> <p style="text-align: center;">OR</p> <p>Interested parties' proposal to include clothing designed to protect the wearer from agricultural chemicals in the partial exemption.</p>
<p>Action 7 — Vehicles</p> <p>Agenda, page 18</p> <p>This item was included on the original agenda.</p>	<p>Adopt either:</p> <p>Staff's recommendation to include in the partial exemption only those new and used vehicles that are described in Vehicle Code sections 36000, 36005 and 36015 as implements of husbandry,</p> <p style="text-align: center;">OR</p> <p>Interested parties' proposal to include in the partial exemption any new or used vehicle as defined in Chapter 1, Divisions 16 of the Vehicle Code, which is used exclusively in agricultural operations.</p>
<p>Action 8 — Authorization to Publish</p> <p>(whichever language is approved)</p>	<p>Recommend the publication of the proposed Regulation 1533.1 as adopted in the above actions.</p> <p>Operative Date: September 1, 2001</p> <p>Implementation: 30 days following OAL approval</p>

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(Revised January 7, 2002)

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<p>Action 1 — Consent Items</p> <p>Exhibit 4, Pages 1-11</p>	<p>1533.1, Farm Equipment and Machinery</p> <p>(a) GENERAL. Commencing on and after September 1, 2001, Section 6356.5 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of farm equipment and machinery, and parts of farm equipment and machinery purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products. The terms “farm equipment and machinery,” “parts of farm equipment and machinery,” “qualified person,” and “producing and harvesting agricultural products” are defined below.</p> <p>For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p><i>[See pages 13-15 for non-consent items (b)(1)(A) and (b)(1)(B).]</i></p> <p>A list of typical vehicles regarded as farm equipment and machinery is set forth in Appendix A.</p> <p>(2) “Parts of farm equipment and machinery” means:</p> <p>(A) All component parts and contrivances such as belts, shafts, pipes, hoses and moving parts, that are parts of farm equipment and machinery as defined in subdivision (b)(1) which can be separated from the farm equipment and machinery and replaced. Parts of farm equipment and machinery do not include items that are consumed (e.g., burned, evaporate, dissolve, dissipate) through the regular use of the farm equipment and machinery (e.g., gasoline, cleaning agents, solutions, chemicals) which are ordinarily supplies; however, engine oil not consumed (i.e., not consumed as part of fuel for a two-stroke engine) is regarded as a</p>

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	<p>component part.</p> <p>(B) All repair and replacement parts for farm equipment and machinery as defined in subdivision (b)(1), which replace previous parts and can include parts that are identical to the parts they replace as well as parts that are different from the ones they replace, such as replacement parts added for the purpose of improving or modifying the farm equipment and machinery, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by a qualified person, a person that assists a qualified person, or another person. Parts of farm equipment and machinery do not include tangible personal property used in effectuating the repair of any farm equipment and machinery such as a wrench used to replace a spark plug, except tools used for repair that are designed exclusively for and sold with specific farm equipment and machinery.</p> <p>(3) "Person that assists a qualified person" means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual) which include soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services, that uses farm equipment and machinery in assisting a person engaged in a line of business described in subdivision (b)(6) below. A person that assists a qualified person may perform a construction contract only if the person performing the contract is engaged in farm management services as described in Code 0762 of the SIC Manual and the construction is integral to the producing and harvesting of an agricultural product as defined in (b)(5). A person that assists a qualified person must provide physical aid or assistance in the actual producing and harvesting of agricultural products owned by the qualified person and not merely provide aid in administrative, managerial, or marketing activities. A person that assists a qualified person does not include persons performing services such as an attorney, accountant, consultant, or other similar activity. Except as otherwise provided above, a person that assists a qualified person also does not include persons who perform construction contracts or who perform repairs to farm equipment and machinery, or a person that assists such persons.</p> <p>(4) "Primarily" means used 50 percent or more of the time in producing and harvesting agricultural products as defined in subdivision (b)(5).</p> <p>(5) "Producing and harvesting agricultural products" means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops,</p>

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	<p>plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Code 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 – Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(5) or a person who assists a qualified person as defined in (b)(3).</p> <p>For example, a person engaged in a SIC Code 0172 establishment that performs activities such as producing grapes on a grape farm or vineyard, who uses crop drying equipment primarily to remove moisture from the grapes to prevent mold, will qualify for the partial exemption if the grapes are owned by a qualified person engaged in an establishment described in SIC Code 0111 to 0291. However, a person who is exclusively engaged in a SIC Code 2034 establishment that sun dries or artificially dehydrates fruits and vegetables such as dates, prunes or raisins, that purchases grapes from a grape farm, and uses crop drying equipment primarily to change the character of the commodity from a grape to a raisin, will not qualify for the partial exemption since he or she is not engaged in a qualified SIC Code activity. A person engaged in a qualified SIC Code that performs a harvest activity will qualify for the partial exemption to the extent the qualified property is used primarily in such qualified activity despite the fact that the property may otherwise be used less than 50% of the time in post-harvest activities by a person undertaking activities described in SIC Code 2034.</p>

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	<p>(6) "Qualified person" means a person engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291, which includes cash grains, field crops, vegetables and melons, fruits and tree nuts, horticultural specialties, livestock, dairy, poultry and eggs, and animal specialties and who sells such commodities to others. A qualified person also includes any person conducting activities, as defined in (b)(3) above, that uses qualified property to assist a person engaged in a line of business described herein in producing and harvesting agricultural products owned by the qualified person. A qualified person is not required to be engaged 50 percent or more of the time in a line of business described in Codes 0111 to 0291. A qualified person does not include a person operating a garden plot, orchard, or farm for the purpose of growing produce or animals for that person's own use.</p> <p>(7) "Qualified property" means farm equipment and machinery, and the parts thereof, as defined in subdivision (b)(1)-(2) used primarily in producing and harvesting agricultural products.</p> <p>(c) PARTIAL EXEMPTION CERTIFICATES.</p> <p>(1) IN GENERAL. Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was primarily used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the patial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).</p>

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	<p>The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.</p> <p>(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix B may be used as a blanket partial exemption certificate. Appendix B may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.</p> <p>(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:</p> <p>(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.</p> <p>(B) The name, address and telephone number of the purchaser.</p> <p>(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.</p> <p>(D) A statement that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products.</p> <p>(E) A statement that the purchaser is a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or is a person that assists such classified person by performing an agricultural service described in Codes 0711 to 0783 of the SIC Manual.</p>

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	<p>(F) Description of property purchased.</p> <p>(G) Date of execution of document.</p> <p>(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.</p> <p>While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.</p> <p>(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where a qualified person states that he or she is engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or in which a person that assists a qualified person states that he or she performs an agricultural service described in Codes 0711 to 0783 of the SIC Manual and states that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products. If the qualified person or person that assists a qualified person is buying property of a kind not normally used in producing and harvesting agricultural products, the seller should require a statement as to how the specific property purchased will be used. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.</p> <p>(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth</p>

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	<p>above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).</p> <p>The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.</p> <p>The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.</p> <p>(e) REFUND OF PARTIAL EXEMPTION.</p> <p>(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a qualified purchaser of qualified property or, at the purchaser's sole option, the purchaser may be credited with such amount.</p> <p>(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.</p> <p>(f) IMPROPER USE OF PARTIAL EXEMPTION.</p> <p>(1) PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION.</p>

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	<p>Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.</p> <p>(2) PURCHASES BY NON-QUALIFIED PERSONS. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.</p> <p>(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.</p> <p>(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.</p> <p>(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.</p> <p>(h) LEASES TO QUALIFYING PERSONS.</p> <p>(1) LEASES—IN GENERAL. Leases of tangible personal property which are classified as "continuing sales" and "continuing purchases" of tangible personal property, in accordance with Regulation 1660, "Leases of Tangible Personal Property – In General," may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used in producing and harvesting agricultural products, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.</p> <p>(2) LEASES—ACQUISITION SALE AND LEASEBACK. A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person's purchase of property, within the</p>

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	<p>meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.</p> <p>(3) SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION. If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.</p> <p>(i) RECORDS. Adequate and complete records must be maintained by the qualified person as evidence that the qualified property purchased was used by the qualified person primarily in producing and harvesting agricultural products.</p> <p>(j) EFFECTIVE DATE. This regulation is effective as of September 1, 2001.</p> <p>APPENDIX A. The following is a list of typical vehicles regarded as farm equipment and machinery:</p> <ol style="list-style-type: none"> 1. A lift carrier or other vehicle designed and used exclusively for the lifting and carrying of implements of husbandry or tools used exclusively for the production or harvesting of agricultural products, when operated or moved upon a highway. 2. A trailer of the tip-bed type when used exclusively in the transportation of other implements of husbandry or tools used exclusively for the production or harvesting of agricultural products. 3. A trailer or semi-trailer having no bed, and designed and used solely for transporting a hay loader or swather. 4. A spray or fertilizer applicator rig used exclusively for spraying or fertilizing in the conduct of agricultural operations, except anhydrous ammonia fertilizer applicator rigs which have a transportation capacity in excess of 500 gallons. 5. A trailer or semi-trailer which has a maximum transportation capacity in excess of 500 gallons, but not more than 1,000 gallons, used exclusively for the transportation and application of anhydrous ammonia, if the vehicle is either equipped with operating brakes or is towed upon a highway by a motor truck

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	<p>that is assigned a manufacturer's gross vehicle weight rating of 3/4 ton or more.</p> <p>6. A nurse rig or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of an applicator rig or an airplane used for the dusting, spraying, fertilizing, or seeding of crops.</p> <p>7. A row duster.</p> <p>8. A wagon or van used exclusively for carrying products of farming from one part of a farm to another part thereof, or from one farm to another farm, and used solely for agricultural purposes, including any van used in harvesting alfalfa or cotton, which is only incidentally operated or moved on a highway as a trailer.</p> <p>9. A wagon or portable house on wheels used solely by shepherds as a permanent residence in connection with sheep raising operations and moved from one part of a ranch to another part thereof or from one ranch to another ranch, which is only incidentally operated or moved on a highway as a trailer.</p> <p>10. A trap wagon, as defined in Vehicle Code Section 36016, moved from one part of a ranch to another part of the same ranch or from one ranch to another, which is only operated or moved on a highway incidental to agricultural operations. The fuel tank or tanks of the trap wagon shall not exceed 1,000 gallons total capacity.</p> <p>11. Any vehicle which is operated upon a highway only for the purpose of transporting agricultural products and is in no event operated along a highway for a total distance greater than one mile from the point of origin of the trip.</p> <p>12. A portable honey-extracting trailer or semi-trailer.</p> <p>13. A fertilizer nurse tank or trailer that is not self-propelled and which is moved unladen on the highway and auxiliary to the use of a spray or fertilizer applicator rig.</p> <p>14. Any cotton trailer when used on the highways for the exclusive purpose of transporting cotton from a farm to a cotton gin, and returning the empty trailer to such farm.</p>

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	<p>15. A truck tractor or truck tractor and semi-trailer combination which is owned by a farmer and operated on the highways, (1) only incidental to a farming operation, (2) not for compensation, and (3) for a distance of not more than two miles (on the highway) each way. This subdivision applies only to truck tractors with a manufacturer's gross vehicle weight rating over 10,000 pounds that are equipped with all-wheel drive and off-highway traction tires on all wheels, and only to semi-trailers used in combination with such a truck tractor and exclusively in production or harvesting of tomatoes. The vehicles specified in this subdivision shall not be operated in excess of 25 miles per hour on the highways.</p> <p>16. Any farm tractor used upon a highway to draw a farm trailer carrying farm produce, or to draw any trailer or semi-trailer carrying other implements of husbandry, between farms, or from a farm to a processing or handling point and returning with or without the trailer.</p>

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ACTION 1 – CONSENT ITEMS (Continued)

Appendix B.

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

I, as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.¹

Type of Farm Equipment and Machinery (or parts² thereof)* _____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (If applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (If applicable) ³
TITLE		TELEPHONE NUMBER
ADDRESS	CITY	STATE, ZIP

- 1. Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.**
- 2. If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.**
- 3. If you are not required to hold a seller's permit, please enter "Not Applicable."**

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Action 2 – Agricultural Operating Structures	<p>(b) DEFINITIONS. For purposes of this regulation:</p> <p>(1) “Farm equipment and machinery” means implements of husbandry, which include:</p> <p>(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope. Farm equipment and machinery also includes any equipment or device used or required to operate, control, or regulate machinery not limited to computers, data processing equipment, and computer software, including both operating programs and application programs. Farm equipment and machinery may be attached to realty.</p>	<p>(b) DEFINITIONS. For purposes of this regulation:</p> <p>(1) “Farm equipment and machinery” means implements of husbandry, which include:</p> <p>(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, agricultural operating structures, squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope. Farm equipment and machinery also includes any equipment or device used or required to operate, control, or regulate machinery not limited to computers, data processing equipment, and computer software, including both operating programs and application programs. Farm equipment and machinery may be attached to realty.</p> <p><u>For purposes of this regulation, agricultural operating structures include single purpose agricultural or horticultural structures or enclosures. Agricultural operating structures include single purpose agricultural or horticultural structures as defined in Treasury Regulation 1.48-10 (26 CFR 1.48-10).</u></p>

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Action 2 (continued)		<p><u>Such structures must be</u> specifically designed and constructed for the permitted purposes of housing, raising and feeding of livestock or the commercial production of plants. A structure is specifically designed and constructed if it is not economic to design and construct the structure for the intended qualifying purpose and then use the structure for a different purpose. A structure qualifies as single purpose agricultural or horticultural structure only if it is used exclusively for a permitted purpose. The structure may not be used for any nonpermissible purposes such as processing, marketing, or more than incidental use for storing feed and equipment. A single purpose agricultural structure also houses equipment necessary to house, raise and feed livestock including, but not limited to, equipment necessary to contain livestock, to provide them with feed or water, and to control the temperature, lighting, and humidity of the interior structure. Examples of structures that qualify as a single purpose agricultural or horticultural structure include, but are not limited to, a farrowing barn, greenhouse, free stall barn, milking parlor, and egg production or poultry brooding facility. Single purpose agricultural or horticultural structures do not include general purpose farm buildings.</p>
Action 3 – Tangible Personal Property That Becomes an Integral Part of Real Property	<p>1533.1(b)(1)(A) ... Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation:...</p>	<p>1533.1(b)(1)(A) ... Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation:...</p>

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Action 3 (continued)	(iii) incorporated, attached or affixed to, real property that loses its identity to become an integral and inseparable part of the real property such as concrete and building materials, electrical equipment and lighting, underground pipes and plumbing, and pipe, cable and other related materials.	(iii) incorporated, attached or affixed to, real property that loses its identity to become an integral and inseparable part of the real property such as concrete and building materials, electrical equipment and lighting, underground pipes and plumbing, and pipe, cable and other related materials.
Action 4 – Fuel Storage Equipment	1533.1(b)(1) (A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, wind machines...	1533.1(b)(1) (A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, <u>fuel storage equipment</u> , wind machines...
Action 5 – Repair Tools	1533.1(b)(1)(A) ... Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation: (i) used in effectuating the repair of any property used as an implement of husbandry, except tools used for repair that are designed exclusively for and sold with a specific implement of husbandry; . . .	1533.1(b)(1)(A) ... Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation: (i) used in effectuating the repair of any property used as an implement of husbandry, except tools used for repair that are designed exclusively for and sold with a specific implement of husbandry; . . .

AGENDA B — January 9, 2002 Business Taxes Committee Meeting
Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
Regulation 1533.1, Farm Equipment and Machinery
(Revised January 7, 2002)

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties
Action 6 – Protective Clothing	<p>1533.1(b)(1)(A) ... Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation: . . . (ii) a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, an article of clothing, except clothing designed primarily to protect a commodity; . . .</p>	<p>1533.1(b)(1)(A) ... Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation: . . . (ii) a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, and articles of clothing, except clothing designed primarily to protect a commodity or to apply agricultural chemicals as described in 3 CCR 6738; . . .</p>
Action 7 – Vehicles	<p>1533.1(b)(1) (B) A new or used vehicle, as described in Vehicle Code sections 36000, 36005 and 36015, which is used exclusively in the conduct of agricultural operations such as a farm tractor, but not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, unless such vehicle is otherwise specified as an implement of husbandry in some other provision of the Vehicle Code. Implements of husbandry do not include automatic bale wagons or cotton module movers as defined in Vehicle Code sections 36011 and 36012.</p>	<p>1533.1(b)(1) (B) Any new or used vehicle, as defined in Chapter 1, Division 16 of the Vehicle Code, which is used exclusively in the conduct of agricultural operations such as a farm tractor, but not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, unless such vehicle is otherwise specified as an implement of husbandry in some other provision of the Vehicle Code.</p>

AGENDA C — January 9, 2001 Business Taxes Committee Meeting
Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

Action 1 — Consent Items Agenda C, Pages 2-8	Adopt portions of proposed Regulation 1533.2 as agreed upon by interested parties and staff.
Action 2 — Designation of Owner of Commodity Transported by a Commercial Hauler. (Does the partial exemption apply to transportation of agricultural commodities owned by someone other than the grower of those commodities?) Agenda C, Page 9	Adopt either: Staff's recommendation that Examples A and B clarify that commodities being transported be owned by the grower, <p style="text-align: center;">OR</p> Interested parties' proposal that Examples A and B should also include transported commodities owned by a person other than the grower.
Action 3 — Transportation by Food Processor. (Do food processing activities include transportation and delivery of food products?) Agenda C, Page 10	Adopt either: Staff's recommendation to exempt diesel fuel used in food processing activities occurring within a processing facility, as well as transportation between facilities of the same food processing entity, <p style="text-align: center;">OR</p> Interested parties' proposal to also include diesel fuel used by a food processor to transport food products to the first point of sale.
Action 4 — Definition of “Marketplace.” (Does “marketplace” include sales beyond the first place of sale?) Agenda C, Page 11	Adopt either: Staff's recommendation to define “marketplace” as the first place of sale of an agricultural commodity, whether for resale, at retail, or otherwise, <p style="text-align: center;">OR</p> Interested parties' proposal to define “marketplace” as the first point of sale by a food processor notwithstanding any intermediate food processing activities, as well as any and all destinations of an agricultural commodity owned by a person engaged in farming activities; or a cooperative, joint venture, corporation or partnership in which the person engaged in farming activities has a financial interest.
Action 5 — Authorization to Publish (whichever language is approved)	Recommend the publication of the proposed Regulation 1533.2 as adopted in the above actions. Operative Date: September 1, 2001 Implementation: 30 days following OAL approval

AGENDA C — January 9, 2001 Business Taxes Committee Meeting
Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

Formal Issue Paper Number 01-046

Action Item	Staff and Industry's Proposed Regulatory Language
<p>Action 1 — Consent Items</p> <p>Exhibit 4, Pages 1-11</p>	<p>1533.2, Diesel Fuel Used in Farming Activities or Food Processing</p> <p>(a) GENERAL. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.</p> <p>For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>(b) DEFINITIONS. For purposes of this regulation:</p> <p>(1) “Farming activities” mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person’s own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In</p>

AGENDA C — January 9, 2001 Business Taxes Committee Meeting
Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

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Action Item	Staff and Industry's Proposed Regulatory Language
	<p>determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.</p> <p><i>[See page 9 for non-consent items (b)(1)]</i></p> <p>Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.</p> <p>(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.</p> <p>(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.</p> <p><i>[See pages 10-11 for non-consent items (b)(4) and (b)(5)]</i></p> <p>(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.</p> <p>(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).</p>

AGENDA C — January 9, 2001 Business Taxes Committee Meeting
Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
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	<p>(c) PARTIAL EXEMPTION CERTIFICATES.</p> <p>(1) IN GENERAL. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).</p> <p>The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.</p> <p>(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.</p> <p>(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:</p> <p>(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.</p> <p>(B) The name, address and telephone number of the purchaser.</p>

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	<p>(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.</p> <p>(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.</p> <p>(E) Date of execution of document.</p> <p>(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.</p> <p>While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.</p> <p>(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.</p> <p>(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).</p> <p>The purchaser who files an individual use tax return must attach a completed partial exemption certificate to</p>

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Action Item	Staff and Industry's Proposed Regulatory Language
	<p>the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.</p> <p>The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.</p> <p>(e) REFUND OF PARTIAL EXEMPTION.</p> <p>(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.</p> <p>(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.</p> <p>(f) IMPROPER USE OF PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.</p> <p>(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.</p> <p>(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.</p>

AGENDA C — January 9, 2001 Business Taxes Committee Meeting
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Action Item	Staff and Industry's Proposed Regulatory Language
	<p>(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.</p> <p>(h) RECORDS. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.</p> <p>(i) EFFECTIVE DATE. This regulation is effective as of September 1, 2001.</p>

January 9, 2001 Business Taxes Committee Meeting
Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

ACTION 1 - CONSENT ITEMS (continued)**Appendix A****PARTIAL EXEMPTION CERTIFICATE****STATE BOARD OF EQUALIZATION****Qualified Sales and Purchases of Diesel and Farm Equipment and Machinery**

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

Diesel Fuel Used in Farming Activities or Food Processing* - I as the undersigned purchaser, hereby certify that of the diesel purchased, _____ % will be used in qualified farming activities or food processing in accordance with Revenue and Taxation Code Section 6357.1.

Farm Equipment and Machinery (or parts¹ thereof)* - I as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.²

Type of Farm Equipment and Machinery (or parts thereof) _____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE	
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		TELEPHONE NUMBER	
TITLE		PERMIT NUMBER (If applicable) ³	
ADDRESS	CITY	STATE, ZIP	

1. If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.
2. Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.
3. If you are not required to hold a seller's permit, please enter "Not Applicable."

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Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties
<p>Action Item 2 - Designation of Owner of Commodity Transported by a Commercial Hauler</p> <p>Exhibit 2b, Page 1</p>	<p>(b) DEFINITIONS..... (1) “Farming activities” . . .</p> <p>Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.</p> <p>Example A: A commercial hauler travels from its company yard to Grower A’s field to pick up a load of tomatoes owned by Grower A. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.</p> <p>Example B: A commercial hauler travels from its company yard to Grower A’s field to pick up a load of fresh bell peppers owned by Grower A. The bell peppers are sold to a grocery store and are delivered to the grocery store’s distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard to the commercial hauler for use from the yard to Grower A’s field and to the grocery store’s distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.</p>	<p>(b) DEFINITIONS... (1) “Farming activities” . . .</p> <p>Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.</p> <p>Example A: A commercial hauler travels from the company yard to Grower A’s field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.</p> <p>Example B: A commercial hauler travels from the company yard to Grower A’s field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store’s distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard to the field and to the grocery store’s distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.</p>

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Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels
Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties
<p>Action Item 3 Transportation by Food Processor</p> <p>Exhibit 2b, Page 2-3</p>	<p>(4) “Food processing” means the activities described in Industry Groups 201, 202, 203, 204, and 207 or Codes 2068 and 2084 of the SIC Manual. Food processing activities also include transporting partially processed food products between various divisions of the same food processing entity for further processing operations. Food processing activities do not include a food processor’s transportation and delivery of farm products from a farm or ranch to the food processor nor a food processor’s transportation and delivery of the products of food processing from the food processor to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.</p>	<p>(4) “Food processing” means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and transportation of processed food products to the first point of sale of those products and any empty hauls related to the transportation of that product. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.</p> <p>Example A: A for hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier’s truck yard. The diesel used in this example is eligible for the partial sales tax exemption.</p> <p>Example B: A flour mill transports flour sacks from a bag manufacturer to the mill’s facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used in this example is eligible for the partial sales tax exemption.</p> <p>Example C: Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. The movement of paste from Cannery A to Cannery B, and the movement of soup from Cannery B to the first distribution warehouse are eligible for the partial sales tax exemption. The subsequent movement of product from the first distribution center to retail stores and other warehouses is not eligible for the exemption.</p>

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Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties
<p>Action Item 4 - Definition of "Marketplace"</p> <p>Exhibit 2b, Page 3</p>	<p>(5) "Marketplace" means the place where a commodity is first sold for either resale or at retail, or otherwise.</p>	<p>(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering, butchering, inspection, grading, candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.</p>

Issue Paper Number 01 - 046



BOARD OF EQUALIZATION
KEY AGENCY ISSUE ☐

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Proposed Regulations for Implementing Exemptions for Farm Equipment and Certain Fuels

(Revised January 2, 2002)

I. Issue

Should Regulations 1533, *Liquefied Petroleum Gas*; 1533.1, *Farm Equipment and Machinery*; and 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, be adopted to implement the statutory full and partial exemptions enacted by Assembly Bill 426?

II. Staff Recommendation

Staff recommends adoption of the regulatory language provided in Exhibits 3, 4, and 5.

III. Other Alternative(s) Considered

Adopt staff's recommended language with the following changes:

Regulation 1533.1, *Farm Equipment and Machinery*

Treat agricultural operating structures as qualified farm equipment and machinery.

Treat clothing worn to protect a person from agricultural chemicals as qualified property.

Treat vehicles excluded from the classification of an implement of husbandry by the Vehicle Code as qualified farm machinery and equipment pursuant to Revenue and Taxation Code section 411.

Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

Modify staff's Examples A and B in the definition of "farming activities" to provide that an exempt use of diesel fuel occurs when transporting agricultural commodities owned by a person other than the grower.

Define "food processing" to include transportation and delivery by a food processor.

Define the term "marketplace" to include sales beyond the first place of sale.

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IV. Background

Operative September 1, 2001, Assembly Bill 426, Stats. 2001, Chap. 156 (AB 426) enacted, in part, three new exemptions from the sales and use tax which in general provide:

A full exemption provided by Revenue and Taxation Code (RTC) section 6353 on purchases of liquefied petroleum gas (LPG) used in household activities of a qualified residence or in agricultural activities by qualified persons.

A partial exemption provided by RTC section 6356.5 on purchases of farm equipment and machinery, and parts thereof, used in agricultural activities by qualified persons.

A partial exemption provided by RTC section 6357.1 on purchases of diesel fuel used in farming activities and food processing.

Sales and Use Tax Regulations are designed to implement, interpret and make specific provisions of the Sales and Use Tax Law. The regulations proposed by staff are intended to implement RTC sections 6353, 6356.5, and 6357.1. Copies of the draft regulations are attached to this paper as Exhibits 3, 4, and 5.

Exemption Certificates

The statutes enacted by AB 426 do not include any provisions concerning a purchaser's certification that LPG, farm equipment and machinery, or diesel purchases qualify for the respective exemptions. However, RTC section 6421 provides:

If a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted by this chapter from the computation of the amount of the sales tax, and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of sales tax as if he were a retailer making a retail sale of the property at the time of such use, and the cost of the property to him shall be deemed the gross receipts from such retail sale. The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith.

The provisions of RTC section 6421 apply to any purchases claimed as exempt or partially exempt under the provisions of AB 426.

Interested Parties

Staff held two meetings with interested parties to discuss the proposed regulations. The first meeting was on September 24, 2001; the second on November 7, 2001. After the second interested parties meeting, staff received comments from several interested parties regarding the proposed regulations:

Ms. Sheila Dey of the Western Manufactured Housing Communities Association (hereinafter referred to as WMHCA); Mr. Abe Golomb of Associated Sales Tax Consultants (hereinafter referred to as ASTC); Ms. Linda Balabanian of Deloitte (hereinafter referred to as Deloitte); and a coalition of groups representing California agriculture and agribusiness (hereinafter referred to as Farm Coalition). Their concerns are discussed in the following paragraphs.

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WMHCA was concerned that draft Regulation 1533 did not address sales of LPG by owners of mobilehome parks to residents of the park. In particular, WMHCA wanted to avoid the situation of a mobilehome park owner paying tax or tax reimbursement to vendor of LPG and thereafter be unable to obtain reimbursement from residents of the park because of the LPG exemption. WMHCA suggested that language be added to Regulation 1533 clarifying that purchases by owners of mobilehome parks on behalf of their residents be exempt. Staff agreed with this suggestion and has added language to the regulation clarifying that landlords and management companies may make exempt purchases of LPG when used at the primary residence of a renter or tenant in a household activity.

ASTC had concerns about the format of the proposed full and partial exemption certificates and about language in subdivision (c)(1) of all three proposed regulations that appeared to disallow a full or partial exemption if a retailer filed a late return. Staff has revised the proposed full and partial exemption certificates. Staff has revised the language in subdivision (c)(1) to clarify that retailers may claim exemptions even on late returns, but must file a claim for refund if an exemption is not claimed during the period in which it occurred. ASTC agrees with these revisions.

Deloitte had three concerns with various provisions of all three regulations. Deloitte suggested the deletion of language in Regulation 1533.1 requiring qualified farm equipment and machinery be sold in a completed unit. Deloitte also suggested Regulations 1533 and 1533.1 be revised to provide that qualified property used by farm management companies in the performance of construction contracts integral to agricultural production and harvesting be allowed the respective exemptions implemented by these regulations. Finally, Deloitte suggested deletion of that language in Regulation 1533.2 disallowing contract harvesters. Staff agrees with these suggestions and has revised the draft regulations accordingly.

The Farm Coalition had numerous suggestions for the revision of all three regulations. Staff adopted many of these suggestions. However, there remain several issues on which the Farm Coalition and staff are not in agreement, which include:

In Regulation 1533.1, *Farm Equipment and Machinery*, the Farm Coalition seeks to expand the definition of farm equipment and machinery to include single purpose agricultural and horticultural operating structures such as a furrowing barn, greenhouse, milking parlor, and egg production or poultry brooding facility. The Farm Coalition also seeks to expand the definitions of farm equipment and machinery used primarily in producing and harvesting agricultural products to include property not directly used in cultivating, raising, growing, or harvesting of agricultural products, in particular, personal protective clothing worn to protect a person from agricultural chemicals. The Farm Coalition further proposes deleting references to the Vehicle Code in the regulatory language concerning vehicles that qualify as farm equipment and machinery. (See the discussion in Alternative 1, in section VI of this paper.)

In Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, the Farm Coalition and staff disagree on the definition of the terms “marketplace,” and “food processing,” and within the definition of “farming activities,” the wording of Examples A and B on the application of tax to the sale of diesel fuel. (See the discussion in Alternative 1, section VI of this paper.)

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V. Staff Recommendation

A. Description of the Staff Recommendation

The regulations proposed by staff implement, interpret and make specific the statutory language by providing definitions of terms, examples of how tax applies to certain transactions, and guidelines for the use of full and partial exemption certificates to obtain the statutory full and partial exemptions. Staff and interested parties agree on most of the provisions proposed by staff. Staff's position on issues on which interested parties and staff disagree are detailed in the following paragraphs. A comparison of regulatory language proposed by staff and interested parties is provided in Exhibits 2a and 2b.

Regulation 1533.1, *Farm Equipment and Machinery*

As noted in Background of Section IV of this paper, staff and interested parties disagree about the scope of property that should qualify. Staff believes that qualified property should generally be personal rather than property that unquestionably becomes part of real property. In addition, qualified property should be directly used to produce and harvest agricultural products. Finally, property explicitly excluded by statute cannot, by necessity, be included. Using these criteria, staff believes that agricultural operating structures and clothing worn to protect a person from agricultural chemicals are not qualified property. In addition, staff believes that certain vehicles cannot be considered implements of husbandry.

Staff believes that agricultural operating structures should not qualify as farm equipment and machinery, but tangible personal property located in or attached to the structure that can be classified as fixtures or machinery and equipment may qualify for the partial exemption. Materials such as concrete, lumber, wiring, and piping that become integral to the structure do not qualify since these materials become part of real property and are not consistent with the definition of farm equipment and machinery. Interested parties note that RTC section 6377, which enacts the manufacturer's exemption, includes operating structures in the definition of machinery and equipment; and staff, in their first two discussion papers mentioned operating structures in their explanation of the regulations. In response, staff notes that RTC section 6377 contains very specific language concerning "special purpose buildings" in the definition of property subject to the RTC section 6377 partial exemption. There is no comparable language in AB 426 excluding agricultural operating structures from tax. Staff also notes that the reference to operating structures in the discussion papers was in error. The draft regulations attached to both discussion papers did not include this language.

Staff believes that it is inconsistent to treat clothing worn to protect a person from agricultural chemicals as qualified property. Interested parties have agreed that repair tools, shop supplies and fuel storage equipment do not qualify, nor does property used in administration and marketing. Clothing worn to protect a person from agricultural chemicals is an adjunct to agricultural production and harvesting in the same manner as repair tools, shop supplies, and the equipment used by lawyers and accountants. To provide consistency within the regulation, clothing worn to protect a person from agricultural chemicals should not be considered qualified property. Although interested parties note that farmers are required to use certain clothing to protect themselves from contact with agricultural chemicals, staff notes that operating requirements placed on a business by

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other laws are generally not a consideration when applying the statutory provisions of the Sales and Use Tax Law.

Finally, staff disagrees with the interested party's suggestion that references to the Vehicle Code be deleted from the proposed regulation because qualified vehicles are only required to meet the general criterion of RTC section 411. Staff notes that a specific statutory provision carries more weight than a general provision. RTC section 6356.5 incorporates the provisions of RTC section 411 and, by reference through RTC section 411, the Vehicle Code provisions concerning implements of husbandry. The Vehicle Code specifically excludes certain vehicles from the classification of an implement of husbandry, including cotton module movers and bale wagons. This specific exclusion preempts the general provisions of RTC section 411. Consequently, these vehicles cannot statutorily qualify as farm equipment and machinery whether or not they are used in producing and harvesting agricultural products.

Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

Staff believes that the proposed regulation properly defines "marketplace" as the first place of sale, and properly limits qualified use of diesel fuel used in food processing activities to those activities occurring within a processing facility and for transportation between facilities of the same food processing entity. This interpretation is based on the plain language of the statute. RTC section 6357.1 provides: "Farming activities' also includes the transportation and delivery of farm products to the marketplace." As such, the statutory language only applies to transportation by the farmer to the farmer's marketplace, be that a food processor, distributor, cooperative, or consumer. Transportation by a food processor is not included or anticipated by this language. In addition, it must be noted Governor Gray Davis, in his signing message of August 7, 2001, states that the partial exemption for diesel is intended only to apply to the first destination from the farm.

Within the definition of "farming activities," staff includes two examples of how tax applies to diesel fuel used in transporting a commodity from the grower's field to a processing plant. Staff's Examples A and B differ from the Examples A and B proposed by Interested Parties. Staff's examples include the required qualification that the commodity being transported must be owned by the grower. The interested parties version of the examples does not include this qualification, and therefore may be subject to an overly broad interpretation. The point of the examples is to demonstrate when use of diesel fuel is and is not subject to the partial exemption, not to provide an example of who may qualify for the exemption.

B. Pros of the Staff Recommendation

The regulatory language that is provided to implement certain statutory provisions of AB 426 is fully consistent with statutory language.

C. Cons of the Staff Recommendation

Does not adopt all provisions proposed by interested parties.

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D. Statutory or Regulatory Change

No statutory change is required. Proposed regulations implement, interpret and make specific current statutory language in RTC sections 6353, 6356.5, and 6357.1.

E. Administrative Impact

Staff will be required to notify taxpayers of the new regulations.

F. Fiscal Impact

1. Cost Impact

There will be no additional cost impact. Notification of taxpayers will be implemented primarily through an article in the Tax Information Bulletin. The cost of preparing such an article is routine and within current budgeted amounts.

2. Revenue Impact

Estimated revenue reduction of \$58.3 million. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Provides taxpayers with guidelines on the agricultural full and partial exemptions enacted by AB 426, thereby reducing uncertainty and confusion.

H. Critical Time Frames

In accordance with statutory provisions, the operative date is September 1, 2001.

Implementation will occur 30 days after approval by the Office of Administrative Law (OAL).

VI. Alternative 1

A. Description of the Alternative

The following alternatives proposed by interested parties are discussed in order of the regulations they affect. A comparison of regulatory language proposed by staff and interested parties is provided in Exhibit 2.

Regulation 1533.1, *Farm Equipment and Machinery*

Interested parties propose that agricultural operating structures be included in the definition of farm equipment and machinery. Such agricultural operating structures include incubators/hatchers, poultry shelters, greenhouses, and milking parlors. This proposal is based on two considerations: First, RTC section 6377, which enacts the manufacturer's exemption, includes operating structures in the definition of machinery and equipment; and second, staff, in their first two discussion papers included operating structures in their explanation of the regulations.

Interested parties also propose that qualified property should specifically include clothing worn to protect a person from agricultural chemicals. Protective clothing is required by law when applying

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agricultural chemicals. Interested parties believe that protective clothing should be qualified property because it is integral to agricultural production and harvest and promotes safety.

Finally, interested parties suggest that references to the Vehicle Code be deleted from the subdivision of the proposed regulation concerning vehicles that qualify as farm equipment and machinery. This suggestion is based on two considerations: First, the general definition provided in the staff's recommended language is essentially adopted from Vehicle Code section 36000 and provides a basis for identifying qualified vehicles. The inclusion of specific code references confuse the issue. Second, even though they do not qualify under the Vehicle Code, equipment such as cotton module movers and bale wagons should qualify for exclusion under the general definition provided by RTC section 411 because they are used exclusively in agricultural operations.

Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

Interested parties suggest that the proposed regulation be revised to partially exempt sales of all diesel fuel used in food processing activities, including diesel fuel used to transport the food product to the food processor's first point of sale. In addition, interested parties suggest that purchases of diesel fuel used to ship agricultural products to the first point of sale, whether done directly by a grower or through a cooperative, food processor or marketing entity, should qualify for the partial exemption. The interested parties believe these revisions would eliminate any inequities inherent in the current proposed language and are consistent with the statutory language and legislative intent.

Interested parties also propose a different version of Examples A and B used in the definition of "farming activities." Interested parties believe that staff's examples would be perceived to preclude the partial exemption for diesel fuel in situations where growers combine their commodities at one shipping point, since staff's example refers only to a single grower.

B. Pros of the Alternative

Regulation 1533.1, Farm Equipment and Machinery

Adding agricultural operating structures, clothing worn to protect a person from agricultural chemicals, and vehicles such as cotton module movers and bale wagons to the list of farm equipment and machinery is in keeping with the broad legislative intent of AB 426.

Regulation 1533.2, Diesel Fuel Used in Farming or Food Processing

Expansion of those activities that are included as partially exempt uses of diesel fuel by farmers to food processors eliminates inequities between different types of agricultural business enterprises.

C. Cons of the Alternative

Regulation 1533.1, Farm Equipment and Machinery

Inclusion of agricultural operating structures is inconsistent with statutory language.

Inclusion of clothing worn to protect a person from agricultural chemicals is inconsistent with criteria inherent in staff's proposed language.

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Vehicles such as cotton module movers and bale wagons are statutorily excluded from the classification as an implement of husbandry by the Vehicle Code.

Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

Proposed revisions are not consistent with statutory language.

The wording of Examples A and B provided in the definition of “farming activities” may mislead taxpayers into an overly-broad interpretation, where non-qualifying entities or transactions may be considered to be subject to the partial exemption.

D. Statutory or Regulatory Change

No statutory change is required. Proposed regulations implement, interpret and make specific current statutory language in RTC sections 6353, 6356.5, and 6357.1.

E. Administrative Impact

Staff will be required to notify taxpayers of the new regulation.

F. Fiscal Impact

1. Cost Impact

There will be no additional cost impact. Notification of taxpayers will be implemented primarily through an article in the Tax Information Bulletin. The cost of preparing such an article is routine and within current budgeted amounts.

2. Revenue Impact

Estimated revenue reduction of \$114.2 million. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact

Provides taxpayers with guidelines on the agricultural full and partial exemptions enacted by AB 426, thereby reducing uncertainty and confusion.

H. Critical Time Frames

In accordance with statutory provisions, the operative date is September 1, 2001.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: December 31, 2001



PROPOSED REGULATIONS FOR IMPLEMENTING EXEMPTIONS FOR FARM EQUIPMENT AND CERTAIN FUELS

Recommendation and Alternatives

Staff Recommendation:

Staff recommends adoption of the regulatory language provided in Exhibits 3, 4 and 5 of the issue paper.

Alternative 1:

Adopt staff's recommended language with the following changes:

Regulation 1533.1, *Farm Equipment and Machinery*

Treat agricultural operating structures as qualified farm equipment and machinery.

Treat clothing worn to protect a person from agricultural chemicals as qualified property.

Treat vehicles excluded from the classification of an implement of husbandry by the Vehicle Code as qualified farm machinery and equipment pursuant to Revenue and Taxation Code section 411.

Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

Expand the definition of "food processing" to include any and all transportation by a food processor in any aspect of the delivery of food products to the marketplace.

Expand the term "marketplace" to mean the first point of sale by the food processor of an agricultural or horticultural product.

Modify staff's Examples A and B in the definition of "farming activities."

Revenue Estimate

Background, Methodology, and Assumptions**Staff Recommendation:**

The staff recommendation would provide for the adoption of the proposed Regulations 1533, *Liquefied Petroleum Gas*; 1533.1, *Farm Equipment and Machinery*; and 1533.2 *Diesel Fuel Used in Farming Activities or Food Processing*. This regulatory language is provided to implement certain statutory provisions of AB 426, Chapter 156 (2001). The revenue impacts outlined in this estimate are due to the passage of this statute.

Liquefied Petroleum Gas

Regulation 1533 would provide regulatory language to implement the sales and use tax exemption for Liquefied Petroleum Gas (LPG) used in household activities of a qualified residence or in agricultural activities by qualified persons.

Based on information from the U.S. Energy Information Administration's *Residential Energy Consumption in 1997*, we estimate that the total expenditures for LPG used in household activities of a qualified residence would be \$137 million.

Based on information from the American Petroleum Institute, we estimate that the total annual expenditures for LPG used in agricultural activities by qualified persons would be \$28.1 million.

The total annual LPG expenditures exempted by AB 426 as reflected in the staff recommendation would amount to \$165.1 million. This exemption is from both the state and local sales and use tax and would result in a revenue loss of \$13.1 million annually.

Farm Equipment and Machinery

Regulation 1553.1 would provide regulatory language to implement the partial sales and use tax exemption for farm equipment and machinery used in agricultural activities by qualified persons.

Based on information from the Far West Equipment Dealers Association, we estimate that the total annual expenditures for farm equipment and machinery used in agricultural activities by qualified persons amount to \$450 million. Exempting these purchases from the state sales and use tax would result in a revenue loss of \$22.5 million annually.

Diesel Fuel Used in Farming Activities or Food Processing

Regulation 1553.2 would provide regulatory language to implement the partial sales and use tax exemption for diesel fuel used in farming activities and food processing. Farming activities also include the transportation and delivery of farm products to the marketplace.

Based on information from the U.S. Energy Information Administration, we estimate that the total annual expenditures for diesel fuel used in farming activities and food processing would be \$334.2 million.

Based on information from the U.S. Energy Information Administration, we estimate that the annual diesel fuel expenditures for the transportation and delivery of farm products to the place where these products are first sold amount to \$119.4 million. This estimate is based on the transportation of agricultural products by firms engaged in the transportation of agricultural

Revenue Estimate

products. Specifically the estimate includes only those firms operating specialized vehicles for this purpose. The estimate is overstated to the extent that there are instances where the farmer sells his products to a processor or wholesaler at his farm and the farm products would be transported by the buyer. In such cases, the diesel fuel used in the transportation of the farm products would not be exempt under the proposed regulation.

The total annual diesel fuel expenditures exempted by AB 426 as reflected in the staff recommendation would amount to \$453.6 million. Exempting these purchases from the state sales and use tax would result in a revenue loss of \$22.7 million annually.

The total revenue loss associated with these provisions of AB 426 as reflected in the staff recommendation would be as follows:

Exemption	Sales	Revenue Loss			Total
		State (5%)	Local (2.25%)	District (0.67%)	
		(in millions)			
LPG	\$ 165.1	\$ 8.3	\$ 3.7	\$ 1.1	\$ 13.1
Farm Equip.	450.0	22.5			22.5
Diesel	453.6	22.7			22.7
Total	\$1,068.7	\$53.5	\$ 3.7	\$ 1.1	\$ 58.3

Alternative 1:

Alternative 1 would include all of the staff's recommended language and would propose language that would expand the exemption for farm equipment and machinery and diesel fuel used in farming activities and food processing. The revenue impacts noted below are in addition to the revenue loss noted in the staff recommendation.

Farm Equipment and Machinery

Alternative 1 would treat agricultural operating structures as qualified farm equipment and machinery. Structures that would qualify for the exemption would include farrowing barns, greenhouses, milking parlors, and egg production or poultry brooding facilities. Based on information from the U.S. Census's 1997 Census of Agriculture, we estimate that the annual taxable transactions associated with these structures amounts to about \$100 million. Exempting these purchases from the state sales and use tax would result in a revenue loss of \$5 million annually.

Alternative 1 would treat clothing worn to protect a person from agricultural chemicals as qualified property. We were unable to find any information concerning the annual expenditures for personal protection equipment. However, we believe that the revenue loss from exempting these items would be minimal.

Alternative 1 would treat vehicles excluded from the classification of an implement of husbandry by the Vehicle Code as qualified farm machinery and equipment. Vehicles that would be exempt under this proposal would include such vehicles as bale wagons and cotton module movers. Based on information from farm equipment dealers, we estimate that the annual expenditures for these types of vehicles amount to about \$18 million. Exempting these purchases from the state sales and use tax would result in a revenue loss of \$0.9 million annually.

Revenue Estimate

The total additional annual expenditures for farm equipment and machinery exempted by Alternative 1 amount to \$118 million. The loss in state sales and use tax revenue would amount to \$5.9 million annually.

Diesel Fuel Used in Farming Activities or Food Processing

Alternative 1 would expand the definition of “food processing” to include any and all transportation by a food processor in any aspect of the delivery of food products to the marketplace, and expand the definition of “marketplace” to mean the first point of sale by the food processor of an agricultural or horticultural product.

Based on information from the U.S. Energy Information Administration, we estimate that the diesel fuel expenditures for the transportation and delivery of farm products to the place where these products are sold to the ultimate consumer amounted to \$1.12 billion. Subtracting the diesel fuel used to transport these products from the farm to the first point of sale leaves expenditures of about \$1 billion. The state sales and use tax revenue on these expenditures amount to \$50 million. Alternative 1 would exempt the portion of these diesel fuel expenditures used in transporting these products to the first point of sale by the food processor. We were unable to find any information that would allow us to identify what this portion might be.

Based upon the alternative language for Example A and Example B proposed by industry, we estimate that the effect of the language proposed by staff versus the language proposed by industry would result in minimal revenue differences.

Revenue Summary**Staff Recommendation:**

The revenue effect of those provisions of AB 426, Chapter 156 (2001) as implemented by the regulations recommended by staff would be as follows.

	<u>Revenue Effect</u>
State loss (5%)	\$53.5 million
Local loss (2.25%)	3.7 million
Transit loss (0.67%)	1.1 million
Total	\$58.3 million

Alternative 1:

The additional revenue loss associated with the proposed alternative interpretation of AB 426 would be as follows:

			<u>Revenue Loss</u>			
<u>Exemption</u>	<u>Sales</u>	<u>State (5%)</u>	<u>Local (2.25%)</u>	<u>District (0.67%)</u>	<u>Total</u>	

Revenue Estimate

	(in millions)				
LPG	\$	\$ --	\$ --	\$ --	\$ --
Farm Equip.	118.0	5.9			5.9
Diesel *	1,000.0	50.0			50.0
Total	\$1,152.0	\$55.9	\$ --	\$ --	\$ 55.9

* Alternative 1 would exempt an unknown but significant portion of these sales.

The total revenue effect of those provisions of AB 426, Chapter 156 (2001) as implemented by the regulations proposed by Alternative 1 would be as follows.

	<u>Revenue Effect</u>
State loss (5%)	\$109.4 million
Local loss (2.25%)	3.7 million
Transit loss (0.67%)	1.1 million
Total	\$114.2 million

Preparation

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of December 28, 2001

Proposed Regulation 1533.1, Farm Equipment and Machinery
Comparison of Language Proposed by Staff and Interested Parties
Current as of December 28, 2001

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties	Summary Comments
Action Item 2 Operating Structures	<p>(b) DEFINITIONS. For purposes of this regulation:</p> <p>(1) "Farm equipment and machinery" means implements of husbandry, which include:</p> <p>(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope. Farm equipment and machinery also includes any equipment or device used or required to operate, control, or regulate machinery not limited to computers, data processing equipment, and computer software, including both operating programs and application programs. Farm equipment and machinery may be attached to realty.</p>	<p>(b) DEFINITIONS. For purposes of this regulation:</p> <p>(1) "Farm equipment and machinery" means implements of husbandry, which include:</p> <p>(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, agricultural operating structures, squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope. Farm equipment and machinery also includes any equipment or device used or required to operate, control, or regulate machinery not limited to computers, data processing equipment, and computer software, including both operating programs and application programs. Farm equipment and machinery may be attached to realty.</p>	<p>Staff believes that agricultural structures must be considered real property and not included in this partial exemption for farm machinery and equipment.</p> <p>Interested parties believe that agricultural operating structures should be included in the partial exemption, similarly to the provision for the new manufacturer's partial exemption (RTC 6377).</p>

Proposed Regulation 1533.1, Farm Equipment and Machinery
Comparison of Language Proposed by Staff and Interested Parties
Current as of December 28, 2001

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties	Summary Comments
Action Item 2 Operating Structures	<p>Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation: (i) used in effectuating the repair of any property used as an implement</p>	<p>For purposes of this regulation, agricultural operating structures include single purpose agricultural or horticultural structures or enclosures specifically designed and constructed for the permitted purposes of housing, raising and feeding of livestock or the commercial production of plants. A structure is specifically designed and constructed if it is not economic to design and construct the structure for the intended qualifying purpose and then use the structure for a different purpose. A structure qualifies as single purpose agricultural or horticultural structure only if it is used exclusively for a permitted purpose. The structure may not be used for any nonpermissible purposes such as processing, marketing, or more than incidental use for storing feed and equipment. A single purpose agricultural structure also houses equipment necessary to house, raise and feed livestock including, but not limited to, equipment necessary to contain livestock, to provide them with feed or water, and to control the temperature, lighting, and humidity of the interior structure. Examples of structures that qualify as a single purpose agricultural or horticultural structure include, but are not limited to, a farrowing barn, greenhouse, free stall barn, milking parlor, and egg production or poultry brooding facility. Single purpose agricultural or horticultural structures do not include general purpose farm buildings.</p> <p>Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person's operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation: (i) used in effectuating the repair of any property used as an implement</p>	Same as above.

Proposed Regulation 1533.1, Farm Equipment and Machinery
Comparison of Language Proposed by Staff and Interested Parties
 Current as of December 28, 2001

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties	Summary Comments
<p>Action Item 3 Protective Clothing</p> <p>Action Item 2 Operating Structures</p> <p>Action Item 4 Vehicles</p>	<p>of husbandry, except tools used for repair that are designed exclusively for and sold with a specific implement of husbandry; (ii) a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, an article of clothing, except clothing designed primarily to protect a commodity; or (iii) incorporated, attached or affixed to, real property that loses its identity to become an integral and inseparable part of the real property such as concrete and building materials, electrical equipment and lighting, underground pipes and plumbing, and pipe, cable and other related materials.</p> <p>(B) A new or used vehicle, as described in Vehicle Code sections 36000, 36005 and 36015, which is used exclusively in the conduct of agricultural operations such as a farm tractor, but not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, unless such vehicle is otherwise specified as an implement of husbandry in some other provision of the Vehicle Code. Implements of husbandry do not include automatic bale wagons or cotton module movers as defined in Vehicle Code sections 36011 and 36012.</p>	<p>of husbandry, except tools used for repair that are designed exclusively for and sold with a specific implement of husbandry; (ii) a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, and articles of clothing, except clothing designed primarily to protect a commodity or to apply agricultural chemicals as described in 3 CCR 6738; or (iii) incorporated, attached or affixed to, real property that loses its identity to become an integral and inseparable part of the real property such as concrete and building materials, electrical equipment and lighting, underground pipes and plumbing, and pipe, cable and other related materials, except if used in a single purpose agricultural or horticultural structure.</p> <p>(B) Any new or used vehicle, as defined in Chapter 1, Division 16 of the Vehicle Code, which is used exclusively in the conduct of agricultural operations such as a farm tractor, but not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, unless such vehicle is otherwise specified as an implement of husbandry in some other provision of the Vehicle Code.</p>	<p>Staff believes that clothing designed to protect the wearer from agricultural chemicals should be considered a supply item not directly related to crop production and harvesting.</p> <p>Interested parties believe that such protective clothing should be included in the partial exemption, since it is required by law and promotes safety.</p> <p>Interested parties want to delete the specific VC sections cited by staff which describe vehicles that qualify as implements of husbandry, and instead substitute a much broader and general VC citation. They argue that this would encompass vehicles that should qualify under the general exclusion provided by RTC 411.</p>

Proposed Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing
Comparison of Language Proposed by Staff and Interested Parties
Current as of December 28, 2001

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties	Summary Comments
<p>Action Item 2 Designation of Owner of Commodity Transported by a Commercial Hauler</p>	<p>(b) DEFINITIONS..... (1) "Farming activities" . . .</p> <p>Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.</p> <p>Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes owned by Grower A. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.</p> <p>Example B: A commercial hauler travels from the company yard to Grower A's field to pick up a load of fresh bell peppers owned by Grower A. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard to Grower A's field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.</p>	<p>(b) DEFINITIONS... (1) "Farming activities" . . .</p> <p>Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.</p> <p>Example A: A commercial hauler travels from the company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.</p> <p>Example B: A commercial hauler travels from the company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard to the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.</p>	<p>Interested parties believe that inclusion of "owned by Grower A" would be perceived to preclude the partial exemption for diesel fuel when multiple growers combine their commodities at one shipping point.</p> <p>Staff believes that without inclusion of "owned by Grower A," the example may be subject to an overly broad interpretation.</p>

Proposed Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing
Comparison of Language Proposed by Staff and Interested Parties
Current as of December 28, 2001

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties	Summary Comments
Action Item 3 Transportation by Food Processor	<p>...</p> <p>(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207 or Codes 2068 and 2084 of the SIC Manual. Food processing activities also include transporting partially processed food products between various divisions of the same food processing entity for further processing operations. Food processing activities do not include a food processor's transportation and delivery of farm products from a farm or ranch to the food processor nor a food processor's transportation and delivery of the products of food processing from the food processor to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.</p>	<p>...</p> <p>(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and transportation of processed food products to the first point of sale of those products and any empty hauls related to the transportation of that product. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.</p> <p>Example A: A for hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.</p> <p>Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used in this example is eligible for the partial sales tax exemption.</p>	<p>Staff believes that the proposed regulation properly limits qualified use of diesel fuel used in food processing activities to those activities occurring within a processing facility and for transportation between facilities of the same food processing entity.</p> <p>Interested parties suggest that diesel fuel used to ship agricultural products to the first point of sale, whether done directly by a grower or through a cooperative, food processor or marketing entity, should qualify for the partial exemption.</p>

Proposed Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing
Comparison of Language Proposed by Staff and Interested Parties
 Current as of December 28, 2001

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Interested Parties	Summary Comments
Action Item 3 (continued)		Example C: Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. The movement of paste from Cannery A to Cannery B, and the movement of soup from Cannery B to the first distribution warehouse are eligible for the partial sales tax exemption. The subsequent movement of product from the first distribution center to retail stores and other warehouses is not eligible for the exemption.	
Action Item 4 Definition of "Marketplace"	(5) "Marketplace" means the place where a commodity is first sold for either resale or at retail, or otherwise .	(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering, butchering, inspection, grading, candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.	Staff believes that the proposed regulation properly defines "marketplace" as the first place of sale. Interested parties believe their version will eliminate any inequities inherent in staff's proposed language and is consistent with the statutory language and legislative intent.

Proposed Regulation 1533. Liquefied Petroleum Gas

Reference: Section 6353, Revenue and Taxation Code.

(a) GENERAL. Commencing on and after September 1, 2001, Section 6353(b) of the Revenue and Taxation Code exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of qualified LPG used by a qualified person in an agricultural activity, or used in a qualified residence for a household activity. The terms “qualified LPG,” “qualified person,” “agricultural activity,” “qualified residence,” and “household activity” are defined below.

(b) DEFINITIONS. For purposes of this regulation:

(1) “Agricultural activity” means the producing and harvesting of agricultural products as defined in subdivision (b)(4), by a qualified person as defined in subdivision (b)(5).

(2) “Household activity” means those activities normally undertaken in a qualified residence as defined in subdivision (b)(7), such as cooking, heating and lighting.

(3) “Person that assists a qualified person” means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual) which include soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services, that uses qualified LPG in assisting a person engaged in a line of business described in subdivision (b)(5). A person that assists a qualified person may perform a construction contract only if the person performing the contract is engaged in farm management services as described in Code 0762 of the SIC Manual and the construction is integral to the producing and harvesting of an agricultural product as defined in (b)(4). A person that assists a qualified person must provide physical aid or assistance in the actual producing and harvesting of agricultural products owned by the qualified person and not merely provide aid in administrative, managerial, or marketing activities. A person that assists a qualified person does not include persons performing services such as an attorney, accountant, consultant, or other similar activity. Except as otherwise provided above, a person that assists a qualified person also does not include persons who perform construction contracts or who perform repairs to farm equipment and machinery, or a person who assists such persons.

(4) “Producing and harvesting agricultural products” means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and

integral activities thereto described in Codes 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 – Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(5) or a person who assists a qualified person as defined in (b)(3).

Example A: Grower A farms raisins and uses qualified LPG to dry Grower A's raisins. Grower A is a qualified person (Code 0172 of the SIC Manual) and uses qualified LPG in the producing and harvesting of an agricultural commodity. The sale of qualified LPG to Grower A for use in this activity is exempt from tax.

Example B: Grower B farms plums and contracts with ABC, Inc. to dry the plums owned by Grower B in preparation for sale. ABC, Inc. uses qualified LPG to dry the plums. ABC, Inc. is a person assisting a qualified person (Code 0723 of the SIC Manual) such that the sale of qualified LPG to ABC for use in this activity is exempt from tax.

Example C: Grower C farms corn. Grower C sells the "wet" corn to a food processor based on the net dry weight of the product. The food processor uses qualified LPG to dry the corn. The food processor's use of qualified LPG to dry the commodity is not a qualified use since the food processor owns the commodity and thereby only performs a non-qualified, post harvesting activity. The sale of qualified LPG to the food processor for use in this activity is not exempt from tax.

(5) "Qualified person" means a person who purchases qualified LPG that is engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291, which includes cash grains, field crops, vegetables and melons, fruits and tree nuts, horticultural specialties, livestock, dairy, poultry and eggs, and animal specialties and who sells such commodities to others. A qualified person also includes any person conducting activities, as defined in subdivision (b)(3), that uses qualified LPG to assist a person engaged in a line of business described herein in producing and harvesting agricultural products owned by the qualified person. A qualified person is not required to be engaged 50 percent or more of the time in a line of business described in Codes 0111 to 0291. A qualified person does not include a person operating a garden plot, orchard, or farm for the purpose of growing produce or animals for that person's own use.

(6) "Qualified LPG" means liquefied petroleum gas delivered into a tank with a storage capacity that is equal to or greater than 30 gallons. Liquefied petroleum gas is a mixture of light hydrocarbons which are gaseous at atmospheric temperature and pressure. Liquefied petroleum gas occurs naturally in crude oil and natural gas production fields and is also produced in the oil refining process. Its main components are Propane (C₃H₈) at a boiling point of -42.07°C and Butane (C₄H₁₀) at a boiling point of 0°C. Delivery into tanks smaller than 30 gallons do not qualify for the exemption even if the total delivery exceeds 30 gallons.

(7) "Qualified residence" means a primary residence not serviced by gas mains and pipes, to which qualified

LPG is delivered by a seller. A primary residence means a person's domicile where that person spends the greatest portion of his or her time during a calendar year. A person may change his or her primary residence only when that person moves from and otherwise abandons his or her previous residence and has no intent to return to that previous residence. In no event shall a primary residence include multiple residences maintained simultaneously such as a second, or vacation home.

Solely for purposes of this regulation, a qualified residence also includes a residence where qualified LPG is purchased by a qualified person for use in a household activity at the primary residence of:

- (A) A person that assists a qualified person; or
- (B) An employee of a qualified person

where such person that assists a qualified person or employee of a qualified person performs an agricultural service described in Codes 0711 to 0783 of the SIC Manual for the qualified person. In addition, solely for purposes of this regulation, a qualified residence includes a residence where qualified LPG is purchased by a landlord or management company on behalf of a renter or tenant for use in a household activity at the primary residence of the renter or tenant.

(c) EXEMPTION CERTIFICATES.

(1) IN GENERAL. A person who purchases qualified LPG for use in an agricultural or household activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with an exemption certificate in order for the retailer to claim the exemption. If the retailer takes an exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a purchaser, the exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. An exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified LPG, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified LPG to the purchaser, or no later than 15 days after the date of purchase. An exemption certificate which is not taken timely will not relieve the retailer of the tax liability; however the retailer may present satisfactory evidence to the Board that the retailer sold the qualified LPG to a purchaser for use in an agricultural or household activity. An exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the exemption on its sales and use tax return for the reporting period during which the transaction subject to the exemption occurred. Where the retailer fails to claim the exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The exemption certificate form set forth in Appendix A may be used to claim the exemption.

(2) BLANKET EXEMPTION CERTIFICATES. In lieu of requiring an exemption certificate for each transaction, a person who purchases qualified LPG for use in an agricultural or household activity may issue a blanket exemption certificate. The exemption certificate form set forth in Appendix A may be used as a blanket exemption certificate. Appendix A may also be used as a specific exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases qualified LPG for use in an agricultural or household activity must include in the exemption certificate how much or what percentage of the qualified LPG will be used in the agricultural or

household activity. If purchasing liquefied petroleum gas not qualifying for the exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket exemption certificate.

(3) **FORM OF EXEMPTION CERTIFICATE.** Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as an exemption certificate with respect to the sale or purchase of the liquefied petroleum gas if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. Except as otherwise provided in subdivision (b)(7), if the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that:

1. Of the liquefied petroleum gas purchased, how much or what percentage will be delivered by the seller into a tank with a storage capacity equal to or greater than 30 gallons for use in a household activity at the primary residence, which is not serviced by gas mains and pipes, of:
 - a. The purchaser;
 - b. A person described in Codes 0711 to 0783 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that assists a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual ("qualified person") or an employee of a qualified person where the LPG is purchased by such qualified person on behalf of the person that assists that qualified person in producing and harvesting agricultural products or on behalf of the employee that assists a qualified person in producing and harvesting agricultural products; or
 - c. A renter or tenant where the LPG is purchased by a landlord or management company on behalf of the renter or tenant.
2. Of the liquefied petroleum gas purchased, how much or what percentage will be delivered into a tank with a storage capacity equal to or greater than 30 gallons for use in producing and harvesting agricultural products, and will be purchased by:
 - a. A person engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, ("qualified person");
 - b. A person described in Codes 0711 to 0783 of the SIC Manual, that assists a qualified person; or
 - c. An employee of a qualified person.

(E) Date of execution of document.

(4) **RETENTION AND AVAILABILITY OF EXEMPTION CERTIFICATES.** A retailer must retain each exemption certificate received from a qualified person for a period of not less than four years from the date on

which the retailer claims an exemption based on the exemption certificate.

While the Board will not normally require the filing of the exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all exemption certificates, or copies thereof, accepted for the purposes of supporting the exemption.

(5) **GOOD FAITH.** A seller will be presumed to have taken an exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept an exemption certificate in good faith where the purchaser states that the qualified LPG will be used in a qualified residence for a household activity or in which a qualified person states that the qualified LPG will be used for an agricultural activity. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the LPG is not subject to an exemption, will not be otherwise used in an exempt manner, or where a person is not a qualified person when purchasing qualified LPG for an agricultural activity.

(d) EXEMPTION CERTIFICATE FOR USE TAX. The exemption certificate must be completed by a purchaser to claim an exemption from use tax on purchases of qualified LPG for use in an agricultural or household activity from an out-of-state retailer not obligated to collect the use tax. An exemption from the use tax shall not be allowed unless the purchaser or retailer claims the exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the exemption occurred. Where the purchaser or retailer fails to claim the exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed exemption.

The exemption certificate form set forth in Appendix A may be used to claim the exemption.

(e) REFUND OF TAX.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a purchaser may claim the exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with an exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a qualified purchaser of qualified LPG or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the exemption as provided by this regulation may file a claim for refund equal to the amount of the exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a purchaser filing a claim for refund of the exemption has the burden of establishing that he or she was entitled to claim the exemption with respect to the amount of refund claimed.

under this part. For transactions subject to sales tax, a person filing a claim for refund of the exemption has the burden of establishing that the purchaser of qualified LPG for use in an agricultural or household activity otherwise met all the requirements of a qualified sale at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF EXEMPTION.

(1) **PROPERTY USED OR DELIVERED IN A MANNER NOT QUALIFYING FOR THE EXEMPTION.** Tax applies to any sale of, and the storage, use, or other consumption in this state of liquefied petroleum gas that is used or delivered in a manner not qualifying for the exemption under this regulation.

(2) **PURCHASES BY NON-QUALIFIED PERSONS.** Tax applies to any sale of, and the storage, use, or other consumption in this state of qualified LPG for use in an agricultural activity if the purchaser is not a qualified person.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of an exemption certificate to the retailer or exemption certificate for use tax to the Board, and then uses or takes delivery of the liquefied petroleum gas in a manner not qualifying for the exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the liquefied petroleum gas at the time the liquefied petroleum gas was so removed, converted, or used.

(2) A purchaser providing an exemption certificate accepted in good faith by the retailer or an exemption certificate for use tax to the Board for liquefied petroleum gas that does not qualify for the exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the liquefied petroleum gas at the time the liquefied petroleum gas was purchased.

(h) RECORDS. Adequate and complete records must be maintained by the purchaser as evidence that the qualified LPG purchased was used in an agricultural or household activity.

(i) EFFECTIVE DATE. This regulation is effective as of September 1, 2001.

Appendix A -

EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Liquefied Petroleum Gas (LPG)

SELLER'S NAME
SELLER'S ADDRESS (Street, City, State, Zip Code)

The undersigned purchaser hereby certifies that the LPG will be used by a qualified person, as applicable, and in the manner as specified below (*check applicable box and complete as necessary*):

- ☐ **LPG used in a Household Activity*** – In accordance with Revenue & Taxation Code Section 6353(b), _____% of the LPG purchased will be delivered by the seller into a tank with a storage capacity equal to or greater than 30 gallons for use in a household activity at the primary residence, which is not serviced by gas mains and pipes, of: 1) the purchaser; 2) a person described in Codes 0711 to 0783 of the Standard Industrial Classification (SIC) Manual, that assists a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual ("qualified person"), or an employee of a qualified person where the LPG is purchased by such qualified person on behalf of the person that assists a qualified person in producing and harvesting agricultural products, or on behalf of the employee of that qualified person in producing and harvesting agricultural products; or 3) a renter or tenant where the LPG is purchased by a landlord or management company on behalf of the renter or tenant.
- ☐ **LPG used in an Agricultural Activity*** – In accordance with Revenue & Taxation Code Section 6353(b), _____% of LPG purchased will be delivered into a tank with a storage capacity equal to or greater than 30 gallons and used in producing and harvesting agricultural products, and will be purchased by: 1) a person engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual ("qualified person"); or 2) a person described in Codes 0711 to 0783 of the SIC Manual, that assists a qualified person; or 3) an employee of the qualified person.

* This certificate will be considered a blanket certificate for future purchases, unless otherwise specified. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number in the following space:

I understand that if the LPG is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price of the LPG to me. I also understand that this exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (If applicable)		DATE	
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (If applicable) ¹	
TITLE		TELEPHONE NUMBER	
ADDRESS	CITY	STATE, ZIP	

1. If you are not required to hold a seller's permit, please enter "Not Applicable."

Proposed Regulation 1533.1. Farm Equipment and Machinery

Reference: Section 6356.5, Revenue and Taxation Code.

(a) GENERAL. Commencing on and after September 1, 2001, Section 6356.5 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of farm equipment and machinery, and parts of farm equipment and machinery purchased for use by a qualified person to be used primarily in producing and harvesting agricultural products. The terms “farm equipment and machinery,” “parts of farm equipment and machinery,” “qualified person,” and “producing and harvesting agricultural products” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) “Farm equipment and machinery” means implements of husbandry, which include:

(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope. Farm equipment and machinery also includes any equipment or device used or required to operate, control, or regulate machinery not limited to computers, data processing equipment, and computer software, including both operating programs and application programs. Farm equipment and machinery may be attached to realty.

Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person’s operations or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation: (i) used in effectuating the repair of any property used as an implement of husbandry, except tools used for repair that are designed exclusively for and sold with a

specific implement of husbandry; (ii) a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, an article of clothing, except clothing designed primarily to protect a commodity; or (iii) incorporated, attached or affixed to, real property that loses its identity to become an integral and inseparable part of the real property such as concrete and building materials, electrical equipment and lighting, underground pipes and plumbing, and pipe, cable and other related materials.

(B) A new or used vehicle, as described in Vehicle Code sections 36000, 36005 and 36015, which is used exclusively in the conduct of agricultural operations such as a farm tractor, but not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, unless such vehicle is otherwise specified as an implement of husbandry in some other provision of the Vehicle Code. Implements of husbandry do not include automatic bale wagons or cotton module movers as defined in Vehicle Code sections 36011 and 36012.

A list of typical vehicles regarded as farm equipment and machinery is set forth in Appendix A.

(2) “Parts of farm equipment and machinery” means:

(A) All component parts and contrivances such as belts, shafts, pipes, hoses and moving parts, that are parts of farm equipment and machinery as defined in subdivision (b)(1) which can be separated from the farm equipment and machinery and replaced. Parts of farm equipment and machinery do not include items that are consumed (e.g., burned, evaporate, dissolve, dissipate) through the regular use of the farm equipment and machinery (e.g., gasoline, cleaning agents, solutions, chemicals) which are ordinarily supplies; however, engine oil not consumed (i.e., not consumed as part of fuel for a two-stroke engine) is regarded as a component part.

(B) All repair and replacement parts for farm equipment and machinery as defined in subdivision (b)(1), which replace previous parts and can include parts that are identical to the parts they replace as well as parts that are different from the ones they replace, such as replacement parts added for the purpose of improving or modifying the farm equipment and machinery, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by a qualified person, a person that assists a qualified person, or another person. Parts of farm equipment and machinery do not include tangible personal property used in effectuating the repair of any farm equipment and machinery such as a wrench used to replace a spark plug, except tools used for repair that are designed exclusively for and sold with specific farm equipment and machinery.

(3) “Person that assists a qualified person” means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual) which include soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services, that uses farm equipment and machinery in assisting a person engaged in a line of business described in subdivision (b)(6) below. A person that assists a qualified person may perform a construction contract only if the person performing the contract is engaged in farm management services as described in Code 0762 of the SIC Manual and the construction is integral to the producing and harvesting of an agricultural product as defined in (b)(5). A person that assists a qualified person must provide physical

aid or assistance in the actual producing and harvesting of agricultural products owned by the qualified person and not merely provide aid in administrative, managerial, or marketing activities. A person that assists a qualified person does not include persons performing services such as an attorney, accountant, consultant, or other similar activity. Except as otherwise provided above, a person that assists a qualified person also does not include persons who perform construction contracts or who perform repairs to farm equipment and machinery, or a person that assists such persons.

(4) “Primarily” means used 50 percent or more of the time in producing and harvesting agricultural products as defined in subdivision (b)(5).

(5) “Producing and harvesting agricultural products” means those activities described in Major Groups 01, 02 and 07 of the SIC Manual. Major Group 01 includes establishments engaged in the production of crops, plants, vines, and trees (excluding forestry operations). This major group also includes establishments engaged in the operation of sod farms; in the production of mushrooms, bulbs, flower seeds, and vegetable seeds; and in the growing of hydroponic crops. Major Group 02 includes establishments engaged in the keeping, grazing, or feeding of livestock for the sale of livestock or livestock products (including serums), for livestock increase, or for value increase. Livestock, as specified in Major Group 02, includes cattle, hogs, sheep, goats, and poultry of all kinds; also included are animal specialties, such as horses, rabbits, bees, pets, fish in captivity, and fur-bearing animals in captivity. Major Group 07 includes establishments engaged in performing soil preparation services, crop services, veterinary services, animal services, landscape and horticultural services, and farm labor and management services. Producing and harvesting agricultural products involves the cultivation of land or the growing, raising, or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and integral activities thereto described in Code 0711 to 0783 of the SIC Manual. Such activities include, but are not limited to, flame weeding, pest control, nut hulling and shelling, crop drying, cotton ginning, poultry and pig brooding, livestock breeding, water heating, crop heating, and fruit ripening. Producing and harvesting agricultural products also includes the washing of agricultural products, the inspection and grading of agricultural products or livestock, or the packaging of agricultural products for shipment. Except as otherwise provided under Major Groups 01, 02 or 07 of the SIC Manual, producing and harvesting activities do not include post harvesting activities nor those activities described or otherwise designated in Major Group 20 – Food and Kindred Products of the SIC Manual. Nevertheless, the specific activities of sun drying or artificially dehydrating fruits and vegetables as described in Code 2034 of the SIC Manual qualify as producing and harvesting activities where those activities are performed by a qualified person as defined in (b)(5) or a person who assists a qualified person as defined in (b)(3).

For example, a person engaged in a SIC Code 0172 establishment that performs activities such as producing grapes on a grape farm or vineyard, who uses crop drying equipment primarily to remove moisture from the grapes to prevent mold, will qualify for the partial exemption if the grapes are owned by a qualified person engaged in an establishment described in SIC Code 0111 to 0291. However, a person who is exclusively engaged in a SIC Code 2034 establishment that sun dries or artificially dehydrates fruits and vegetables such as dates, prunes or raisins, that purchases grapes from a grape farm, and uses crop drying equipment primarily to change the character of the commodity from a grape to a raisin, will not qualify for the partial exemption since he or she is not engaged in a qualified SIC Code activity. A person engaged in a qualified SIC Code that performs a harvest activity will qualify for the partial exemption to the extent the qualified property is used primarily in such qualified activity

despite the fact that the property may otherwise be used less than 50% of the time in post-harvest activities by a person undertaking activities described in SIC Code 2034.

(6) "Qualified person" means a person engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291, which includes cash grains, field crops, vegetables and melons, fruits and tree nuts, horticultural specialties, livestock, dairy, poultry and eggs, and animal specialties and who sells such commodities to others. A qualified person also includes any person conducting activities, as defined in (b)(3) above, that uses qualified property to assist a person engaged in a line of business described herein in producing and harvesting agricultural products owned by the qualified person. A qualified person is not required to be engaged 50 percent or more of the time in a line of business described in Codes 0111 to 0291. A qualified person does not include a person operating a garden plot, orchard, or farm for the purpose of growing produce or animals for that person's own use.

(7) "Qualified property" means farm equipment and machinery, and the parts thereof, as defined in subdivision (b)(1)-(2) used primarily in producing and harvesting agricultural products.

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. Qualified persons who purchase or lease qualified property from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified person, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to exemption under this regulation or the duty of collecting the use tax subject to exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the qualified property, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the qualified property to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the specific property to a qualified person and the property was primarily used in a qualifying manner. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a qualified person may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix B may be used as a blanket partial exemption certificate. Appendix B may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being

purchased. Qualified persons must include in the partial exemption certificate a description of the qualified property. If purchasing tangible personal property not qualifying for the partial exemption, the qualified person must clearly state in documents such as a written purchase order, sales agreement, lease, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) FORM OF PARTIAL EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products.

(E) A statement that the purchaser is a person engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or is a person that assists such classified person by performing an agricultural service described in Codes 0711 to 0783 of the SIC Manual.

(F) Description of property purchased.

(G) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES. A retailer must retain each partial exemption certificate received from a qualified person for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept

a partial exemption certificate in good faith where a qualified person states that he or she is engaged in an agricultural business described in Codes 0111 to 0291 of the SIC Manual or in which a person that assists a qualified person states that he or she performs an agricultural service described in Codes 0711 to 0783 of the SIC Manual and states that the property purchased is to be used primarily, or exclusively as to qualifying vehicles, in producing and harvesting agricultural products. If the qualified person or person that assists a qualified person is buying property of a kind not normally used in producing and harvesting agricultural products, the seller should require a statement as to how the specific property purchased will be used. However, an exemption certificate cannot be accepted in good faith where the seller has knowledge that the property is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a qualified person to claim a partial exemption from use tax on purchases of qualified property from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix B may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a qualified purchaser of qualified property or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a qualified person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of

a qualified person at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION.

(1) **PROPERTY USED IN A MANNER NOT QUALIFYING FOR THE PARTIAL EXEMPTION.** Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property that is used in a manner not qualifying for the partial exemption under this regulation.

(2) **PURCHASES BY NON-QUALIFIED PERSONS.** Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of tangible personal property if a purchaser is not a qualified person.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses that tangible personal property in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for tangible personal property that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was purchased.

(h) LEASES TO QUALIFYING PERSONS.

(1) **LEASES—IN GENERAL.** Leases of tangible personal property which are classified as “continuing sales” and “continuing purchases” of tangible personal property, in accordance with Regulation 1660, “Leases of Tangible Personal Property – In General,” may qualify for the partial exemption subject to all the limitations and conditions set forth in this regulation. This partial exemption may apply to rentals payable paid by a qualified person on or after September 1, 2001 with respect to a lease of qualified property to the qualified person, which qualified property is used in producing and harvesting agricultural products, notwithstanding the fact that the lease was entered into prior to the effective date of this regulation. For purposes of this subdivision, a non-qualified person may purchase property for resale and subsequently lease the property to a qualified person subject to the partial exemption.

(2) **LEASES—ACQUISITION SALE AND LEASEBACK.** A qualified person will be regarded as having paid sales tax reimbursement or use tax with respect to that qualified person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the qualified person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.

(3) **SUBSEQUENT LEASE OF PROPERTY ACQUIRED SUBJECT TO PARTIAL EXEMPTION.** If a qualified person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rentals payable.

(i) **RECORDS.** Adequate and complete records must be maintained by the qualified person as evidence that the qualified property purchased was used by the qualified person primarily in producing and harvesting agricultural products.

(j) **EFFECTIVE DATE.** This regulation is effective as of September 1, 2001.

Draft

Appendix A. The following is a list of typical vehicles regarded as farm equipment and machinery:

1. A lift carrier or other vehicle designed and used exclusively for the lifting and carrying of implements of husbandry or tools used exclusively for the production or harvesting of agricultural products, when operated or moved upon a highway.
2. A trailer of the tip-bed type when used exclusively in the transportation of other implements of husbandry or tools used exclusively for the production or harvesting of agricultural products.
3. A trailer or semi-trailer having no bed, and designed and used solely for transporting a hay loader or swather.
4. A spray or fertilizer applicator rig used exclusively for spraying or fertilizing in the conduct of agricultural operations, except anhydrous ammonia fertilizer applicator rigs which have a transportation capacity in excess of 500 gallons.
5. A trailer or semi-trailer which has a maximum transportation capacity in excess of 500 gallons, but not more than 1,000 gallons, used exclusively for the transportation and application of anhydrous ammonia, if the vehicle is either equipped with operating brakes or is towed upon a highway by a motor truck that is assigned a manufacturer's gross vehicle weight rating of 3/4 ton or more.
6. A nurse rig or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of an applicator rig or an airplane used for the dusting, spraying, fertilizing, or seeding of crops.
7. A row duster.
8. A wagon or van used exclusively for carrying products of farming from one part of a farm to another part thereof, or from one farm to another farm, and used solely for agricultural purposes, including any van used in harvesting alfalfa or cotton, which is only incidentally operated or moved on a highway as a trailer.
9. A wagon or portable house on wheels used solely by shepherds as a permanent residence in connection with sheep raising operations and moved from one part of a ranch to another part thereof or from one ranch to another ranch, which is only incidentally operated or moved on a highway as a trailer.
10. A trap wagon, as defined in Vehicle Code Section 36016, moved from one part of a ranch to another part of the same ranch or from one ranch to another, which is only operated or moved on a highway incidental to agricultural operations. The fuel tank or tanks of the trap wagon shall not exceed 1,000 gallons total capacity.
11. Any vehicle which is operated upon a highway only for the purpose of transporting agricultural products and is in no event operated along a highway for a total distance greater than one mile from the point of origin of the trip.

12. A portable honey-extracting trailer or semi-trailer.
13. A fertilizer nurse tank or trailer that is not self-propelled and which is moved unladen on the highway and auxiliary to the use of a spray or fertilizer applicator rig.
14. Any cotton trailer when used on the highways for the exclusive purpose of transporting cotton from a farm to a cotton gin, and returning the empty trailer to such farm.
15. A truck tractor or truck tractor and semi-trailer combination which is owned by a farmer and operated on the highways, (1) only incidental to a farming operation, (2) not for compensation, and (3) for a distance of not more than two miles (on the highway) each way. This subdivision applies only to truck tractors with a manufacturer's gross vehicle weight rating over 10,000 pounds that are equipped with all-wheel drive and off-highway traction tires on all wheels, and only to semi-trailers used in combination with such a truck tractor and exclusively in production or harvesting of tomatoes. The vehicles specified in this subdivision shall not be operated in excess of 25 miles per hour on the highways.
16. Any farm tractor used upon a highway to draw a farm trailer carrying farm produce, or to draw any trailer or semi-trailer carrying other implements of husbandry, between farms, or from a farm to a processing or handling point and returning with or without the trailer.

Draft

Appendix B.

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

I, as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.¹

Type of Farm Equipment and Machinery (or parts² thereof)* _____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (If applicable)		DATE	
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		PERMIT NUMBER (If applicable) ³	
TITLE		TELEPHONE NUMBER	
ADDRESS	CITY	STATE, ZIP	

1. Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.
2. If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.
3. If you are not required to hold a seller's permit, please enter "Not Applicable."

Proposed Regulation 1533.2. Diesel Fuel Used in Farming Activities or Food Processing

Reference: Section 6357.1, Revenue and Taxation Code.

(a) GENERAL. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) “Farming activities” mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person’s own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person’s acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger

size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes owned by Grower A. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers owned by Grower A. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard to Grower A's field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207 or Codes 2068 and 2084 of the SIC Manual. Food processing activities also include transporting partially processed food products between various divisions of the same food processing entity for further processing operations. Food processing activities do not include a food processor's transportation and delivery of farm products from a farm or ranch to the food processor nor a food processor's transportation and delivery of the products of food processing from the food processor to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

(5) "Marketplace" means the place where a commodity is first sold for either resale or at retail, or otherwise.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel

for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) **FORM OF PARTIAL EXEMPTION CERTIFICATE.** Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) **RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES.** A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) **GOOD FAITH.** A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) **PARTIAL EXEMPTION CERTIFICATE FOR USE TAX.** The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial

exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the

time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) RECORDS. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) EFFECTIVE DATE. This regulation is effective as of September 1, 2001.

Draft

Appendix A

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Diesel and Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

Diesel Fuel Used in Farming Activities or Food Processing* - I as the undersigned purchaser, hereby certify that of the diesel purchased, _____ % will be used in qualified farming activities or food processing in accordance with Revenue and Taxation Code Section 6357.1.

Farm Equipment and Machinery (or parts¹ thereof)* - I as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.²

Type of Farm Equipment and Machinery (or parts thereof) _____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		TELEPHONE NUMBER
TITLE		PERMIT NUMBER (If applicable) ³
ADDRESS	CITY	STATE, ZIP

1. If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.
2. Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.
3. If you are not required to hold a seller's permit, please enter "Not Applicable."